
COUNCIL OF AUSTRALIAN GOVERNMENTS

BEST PRACTICE REGULATION

A GUIDE FOR MINISTERIAL COUNCILS AND
NATIONAL STANDARD SETTING BODIES

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INTRODUCTION

Over 40 Commonwealth-State Ministerial Councils and other inter-governmental decision making fora facilitate consultation and cooperation between the Commonwealth Government and state and territory and local governments in specific policy areas. The councils initiate, develop and monitor policy reform jointly in these areas, and take joint action in the resolution of issues that arise between governments. In particular, Ministerial Councils develop policy reforms for consideration by the Council of Australian Governments (COAG), and oversee the implementation of policy reforms agreed by COAG. Ministerial Council agreements are commonly translated into law and regulation, and it is important that all councils follow consistent principles in developing all proposals which have a regulatory impact.

This document provides guidance to Ministerial Councils and other standard setting bodies (hereafter referred to collectively as “Ministerial Councils”) on best-practice regulation making and review by outlining:

- principles for best-practice regulation making agreed by COAG; and
- guidance for undertaking regulatory impact assessment and preparing a Regulation Impact Statement (RIS) including assistance on undertaking:-
 - risk analysis,
 - cost-benefit analysis,
 - assessments of compliance costs,
 - assessments of competition effects, and
 - consultation.

Importantly, the Guide reflects the commitment to establish and maintain effective arrangements to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition made by COAG at its 10 February 2006 meeting. COAG also agreed to apply these enhanced arrangements to Ministerial Councils. The Guide ensures that regulatory processes at the national level are consistent with principles of best practice regulatory process agreed by COAG.

Governments will establish and maintain effective arrangements at each level of government that maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition by:

- (a) establishing and maintaining “gate keeping mechanisms” as part of the decision-making process to ensure that the regulatory impact of proposed regulatory instruments are made fully transparent to decision makers in advance of decisions being made and to the public as soon as possible;
- (b) improving the quality of regulation impact analysis through the use, where appropriate, of cost-benefit analysis;
- (c) better measurement of compliance costs flowing from new and amended regulation, such as through the use of the Commonwealth Office of Small Business’ costing model;
- (d) broadening the scope of regulation impact analysis, where appropriate, to recognise the effect of regulation on individuals and the cumulative burden on business and, as part of the consideration of alternatives to new regulation, have regard to whether the existing regulatory regimes of other jurisdictions might offer a viable alternative; and
- (e) applying these arrangements to Ministerial Councils.

COAG acknowledges that a large quantity of guidance material has also been developed on best practice regulation at the jurisdictional level that can assist Ministerial Councils to undertake regulatory impact assessment and make sound regulatory decisions. In the case of Ministerial Councils, however, this Guide should act as the primary source of direction.

This Guide replaces the previous COAG document entitled *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*.

APPLICATION

Regulation refers to the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community, as well as to those government voluntary codes and advisory instruments for which there is a reasonable expectation of widespread compliance.

The principles of good regulatory practice and regulatory assessment requirements outlined in this Guide apply to decisions of COAG, Ministerial Councils and intergovernmental standard-setting bodies, however they are constituted. This includes bodies established by statute, or administratively by government, to deal with national regulatory problems.

The principles and assessment requirements apply to agreements or decisions to be given effect, whether at the Commonwealth or State/Territory level, or both, through principal and delegated legislation, administrative directions or other measures which, when implemented, would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done. This does not include purchasing policy or industry assistance schemes.

The principles and assessment requirements do not apply to agreements or decisions that result in regulation that is minor or machinery in nature and do not substantially alter existing arrangements. Nor do the principles apply to early “brainstorming” discussions of Ministerial Councils which are not supported by *written* submissions outlining regulatory options or recommendations regarding regulatory action.

Development of voluntary codes and other advisory instruments should take account of these principles and assessment requirements where there is a reasonable expectation that their promotion and dissemination by standard-setting bodies or by government could be interpreted as requiring compliance. For example, should non-compliance with provisions of a voluntary code be considered as evidence by a court or an administrative body when determining compliance with statutory obligations, such advisory documents are subject to the review process.

The Commonwealth Office of Best Practice Regulation (OBPR) will provide advice and assistance on regulation impact assessment, the preparation of RISs for Ministerial Councils and monitor and report on compliance with the requirements of this COAG Guide. Contact details for the OBPR are available at <http://www.obpr.gov.au>. Process requirements for the preparation of RIS are outlined in this document.

PRINCIPLES OF BEST PRACTICE REGULATION

Principles of Best Practice Regulation

COAG has agreed that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. establishing a case for action before addressing a problem;
2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;
3. adopting the option that generates the greatest net benefit for the community;
4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:-
 - a. the benefits of the restrictions to the community as a whole outweigh the costs, and
 - b. the objectives of the regulation can only be achieved by restricting competition;
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
6. ensuring that regulation remains relevant and effective over time;
7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and
8. government action should be effective and proportional to the issue being addressed.

A discussion of the above principles, and some of the factors Ministerial Councils should consider in applying these principles to the regulation making process when assessing potential responses to policy problems, is included below.

Principle 1: Establishing a case for action before addressing a problem.

An important first step before considering any action is to examine closely whether there is a problem, and to make an initial decision on whether any action is required.

Principle 2: A range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs considered.

Once the problem has been examined and a case for government intervention has been established, officers should identify the objectives for any intervention and consider all feasible options, of both a regulatory and non-regulatory nature, that could wholly or partly achieve these objectives. Working from an initial presumption against new or increased regulation, the overall goal is the effective and efficient achievement of the stated objectives. The 'status quo' and effectiveness of existing regulations should be considered as an option for meeting the objectives.

Principle 3: Adopting the option that generates the greatest net benefit for the community.

This requires a rigorous regulation impact assessment of all the feasible policy options available to address the identified problem. Decision makers should adopt the option which provides the greatest net benefit to the community. Decisions about whether regulatory action is in the public interest should be informed by an assessment of the effectiveness of the proposed action in meeting the identified objective, and the costs and benefits of the proposed action for the community as a whole.

Principle 4: In accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restrictions to the community as a whole outweigh the costs; and
- the objectives of the regulation can only be achieved by restricting competition.

Many existing and proposed regulations and requirements restrict competition, including by imposing barriers to entry, exit, or innovation, and can have the effect of restricting consumer choice, raising prices and reducing overall economic efficiency and productivity.

As far as possible, restrictions on competition should be avoided or minimised. Regulation should only restrict competition where this is necessary to achieve the objective, and the benefits of restricting competition outweigh the costs.

Principle 5: Providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear.

When making a decision to adopt a regulatory solution to a problem in order to deliver the greatest net benefit for the community, it is necessary to clearly articulate any decision and new regulations for the benefit of regulators administering the solution as well as regulated parties.

Regulation should have clearly identifiable outcomes and unless prescriptive requirements are unavoidable in order to ensure public safety in high-risk situations, performance-based requirements that specify outcomes rather than inputs or other prescriptive requirements should be used.

Good regulation should attempt to standardise the exercise of bureaucratic discretion, so as to reduce discrepancies between government regulators, reduce uncertainty and lower compliance costs. Regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest cost to all parties.

Where possible, regulatory instruments should be drafted in 'plain language' to improve clarity and simplicity, reduce uncertainty and enable the public to understand better the implications of regulatory measures.

Appendix A sets out the key features of good regulation in more detail.

Principle 6: Ensuring that regulation remains relevant and effective over time.

To ensure regulation remains relevant and effective over time it is important that all regulation be reviewed periodically. All governments have committed to reviewing annually existing regulations with a view to encouraging competition and efficiency, streamlining the regulatory environment, and reducing the regulatory burden on business arising from the stock of regulation.

Ensuring that regulation remains relevant and effective over time may be achieved through planning for monitoring and review of regulation as part of the development of new regulatory proposals, or by incorporating sunset provisions or review requirements in legislative instruments.

Principle 7: Consulting effectively with affected key stakeholders at all stages of the regulatory cycle.

There should be effective consultation with affected key stakeholders at all stages of the regulatory cycle. Public consultation is an important part of any regulatory development process. Consultation should occur when the options for regulatory action are being considered and a draft RIS (also known as the 'Consultation RIS') has been produced. This will give interested parties a range of options and also in some cases a firm proposal to consider.

Consultation on regulatory options can improve the quality of the solution adopted by:

- ensuring that both those affected by regulation, and the actioning agencies, have a good understanding of what the problem is;
- providing perspectives and suggestions, on alternative options to address the problem, from those parties that will be affected by the government action;
- helping regulators assess competing interests;
- providing a check on the regulator's assessment of costs (including compliance costs) and benefits and whether/how the proposed option will work in practice, thus reducing the risk of unintended consequences if a particular option is adopted;
- identifying interactions between different types of regulations; and
- possibly enhancing voluntary compliance through greater understanding and acceptance of a proposal, thereby reducing reliance on enforcement and sanctions.

Principle 8: Government action should be effective and proportional to the issue being addressed.

In all responses to identified problems, government action should be effective and proportional to the issue being addressed. Effectiveness should be judged solely in terms of meeting the specified objective. Consideration should be given to the effectiveness of implementation and administration and, as relevant, an assessment of likely compliance rates should be made taking into account matters such as incentive structures and costs to regulated parties.

Proportionality involves ensuring that government action does not 'overreach', or extend beyond addressing a specific problem or achieving the identified objective. The scope or nature of government action should be commensurate with the magnitude of a problem, its impacts, or the level of risk without action. The principle of proportionality applies equally to the implementation of regulation, including the development of frameworks for ensuring compliance.

PROCESS GUIDELINES FOR REGULATORY IMPACT ASSESSMENT

Regulation is an essential part of running a well functioning economy and society, but must be carefully designed so as not to have unintended or distortionary effects, such as imposing unnecessarily onerous costs on those affected by the regulations or restricting competition. Assessing the impact of regulation, including analysing the costs and benefits, is therefore important to ensure that it delivers the intended objective without unduly causing adverse effects.

If regulatory options are being considered (such as self-regulation where governments expect business to comply, quasi-regulation, co-regulation and 'black letter law') then Ministerial Councils must subject these options to a regulatory impact assessment process through the preparation of a draft and final RIS.

The purpose of a draft RIS for consultation is to canvass the regulatory options under consideration, in order to determine the relative costs and benefits of those options. The purpose of a final RIS for decision makers is to draw conclusions on whether regulation is necessary, and if so, on what the most efficient and effective regulatory approach might be, taking into account the outcomes of the consultation process. The basic feature of a RIS is the systematic examination of the advantages and disadvantages of possible methods of achieving the objective. A number of quantitative approaches exist to assist in evaluating options as part of the regulatory impact assessment including:

- risk analysis;
- cost-benefit analysis;
- measuring business compliance costs; and
- assessing effects on competition.

Detailed advice for Ministerial Councils on these quantitative approaches (risk analysis, measurement of business compliance costs and assessment of competition effects) is included in the appendices to this guide. The OBPR can also provide advice and assistance and is responsible for monitoring compliance with the requirements set out in this Guide.

The following steps for preparing RIS are provided to assist Ministerial Councils (including their secretariats or advisory committees) in determining appropriate courses of action and maximising the effectiveness and efficiency of new regulation taking into account the principles outlined above.

As a general rule the level of detail within the assessment should be commensurate with the impact of the proposed regulatory measures.

Steps for Policy Officers undertaking Regulatory Impact Assessment

Step one:

Consult early with the OBPR and seek advice about whether a RIS should be prepared.

Step two:

Send the draft RIS (also known as the 'consultation RIS') to the OBPR for advice as soon as practicable and before the draft RIS is made available for public comment. Where a trans-Tasman (such as Trans Tasman Mutual Recognition Arrangement (TTMRA)) issue is involved, the OBPR will refer it to the Regulation Impact Analysis Unit of the New Zealand Ministry of Economic Development for comment.

A Ministerial Council should continue to consult with the OBPR as the draft RIS is developed further.

It is expected that the level of analysis in a draft RIS would be lower than the level on analysis in the final RIS. This is because the impacts of options are sometimes unclear. The community consultation process is designed to allow interested parties and stakeholders to identify help such impacts. In such cases the OBPR may focus its assessment primarily on the first three parts of the draft RIS, the problem, objectives and options section of the RIS.

Step three:

The Ministerial Council should await the comments of the OBPR prior to public release of the draft RIS for the purpose of consultation. The draft RIS approved by OBPR should be publicly released as part of the mandatory community consultation process.

Step four:

Consult with affected stakeholders by placing advertisements in all jurisdictions to give notice of the intention to adopt regulatory measures, to advise that the RIS is available on request and invite submissions.

Step five:

The RIS should be developed further following its public release, taking into account outcomes from the consultation process and incorporating a list of stakeholders consulted and a summary of their views.

Step six:

The final RIS for decision makers should be forwarded to the OBPR prior to a decision being made by a Ministerial Council. The OBPR will assess the RIS within two weeks of receipt. The assessment will focus on whether the RIS meets the requirements set out in this document, including:

- whether the RIS Guidelines have been followed;
- whether the type and level of analysis are adequate and commensurate with the potential economic and social impacts of the proposal; and
- whether the RIS demonstrates that the preferred option results in a clear net benefit to the community.

Where the preferred option restricts competition, the benefits to the community of the restriction should outweigh the costs and it should be demonstrated that the objectives of the regulation can only be achieved by restricting competition.

The OBPR will advise the Ministerial Council or standard setting body of its assessment, incorporating any comments from New Zealand relating to a trans-Tasman issue.

The Ministerial Council will determine whether or not to adopt the OBPR's advice.

Step seven:

Following a decision by the Ministerial Council to proceed with a regulatory course of action, the decision making body should respond to any issues that have not been dealt with in the way recommended by the OBPR.

Step eight:

Both OBPR comments and any responses made by Ministerial Councils should be available to Commonwealth, State and Territory Cabinets.

Step nine:

The OBPR is to advise Senior Officials through the COAG Secretariat in the Department of the Prime Minister and Cabinet if, in its opinion, decisions of Ministerial Councils are inconsistent with COAG Guidelines.

After a decision is taken, the final RIS, which should be of a standard suitable for publication, will generally be made public.

RIS Guidelines

What needs to be included in a RIS?

This section outlines the process for preparing a RIS and the key questions for consideration at each stage in the process. The basic feature of a RIS is the systematic examination of the advantages and disadvantages of possible methods of achieving an agreed objective.

As a general rule, the level of analysis included in the final RIS provided to the decision maker should be higher than that included in the draft RIS which is prepared for the purpose of consultation.

As outlined below there are seven key elements that should be contained in a RIS. The detail and depth of analysis in a RIS should be commensurate with the magnitude of the problem and with the size of the potential impacts of the proposal. More detailed discussion of the seven elements of a RIS can be found in the OBPR's *Best Practice Regulation Handbook*, which can be downloaded from <http://www.obpr.gov.au/bestpractice/index.html>

Element 1 Statement of the Problem

The RIS should clearly identify the fundamental problem(s) that need to be addressed. This part of the analysis must:

- present evidence on the magnitude (scale and scope) of the problem;
- document relevant existing regulation at all levels of government, and demonstrate that it is not adequately addressing the problem;
- if the problem involves risk, identify the relevant risks and estimate the probability of an adverse outcome, including where no new or amended regulations are made and where government action would reduce the risk; and
- present a clear case for considering that additional government action may be warranted, taking account of existing regulation and any risk issues.

The statement of the problem should establish a case for action (Best Practice Regulation Principle 1). In particular, officers should consider the following questions:

- what is the problem being addressed?
- how significant is it?
- what are the costs, risks or benefits of maintaining the status quo?

- why is government action needed to correct the problem?
- is there relevant regulation already in place?
- if regulation is in place, why is additional action needed?

Information should be obtained on the nature and magnitude of the problem as well as identifying what government actions (if any) have been taken in the past to address the problem. In some cases government intervention in a market may be justified on the basis of 'market failure', which can arise where there is:

- imperfect competition;
- externalities;
- public goods; or
- imperfect or costly information.

The term market failure is sometimes misunderstood to indicate a failure of markets to deliver a desirable social or equity goal. Any underlying market failure, regulatory failure (for example, unintended consequences or failure of existing regulation) or risks should be clearly identified.

Element 2 Objectives

The RIS should clearly articulate the objectives, intended outcomes, goals or targets of government action. The objectives should not pre-justify a preferred solution. Nor should government regulation be considered to be an objective of government action (that is, regulation is a means to an end, not an end in itself). The objectives should be specified broadly enough to allow consideration of all relevant alternative solutions, but without being so broad that the range of options becomes too large to assess, or the extent to which objectives have been met becomes too hard to establish.

Element 3 Statement of Options

The RIS should identify a range of viable options including, as appropriate, non-regulatory, self-regulatory and co-regulatory options. If only one option (apart from the status quo) is considered feasible, the RIS should provide sound justification for considering only two options.

The Statement of Options of a RIS should address Principle 2 by demonstrating that officers have considered a range of policy options and the benefits and costs of these options.

Regulatory measures and instruments should be the minimum required to achieve the pre-determined and desirable outcomes. Where a decision is made to consider regulatory options additional factors that should be explored include:

- consistency with Australia's international obligations and relevant international accepted standards and practices;
- potential incentive effects and secondary effects;
- minimisation of regulation and administrative burdens as much as possible;
- the potential regulatory burden of alternative measures on the community; and
- compliance and enforcement issues.

Alternatives to regulatory options might include education campaigns.

Element 4 Impact Analysis (Costs and Benefits)

The RIS should provide an adequate analysis of the costs and benefits of the feasible options and should:

- identify the groups in the community likely to be affected by each option and specify significant economic, social and environmental impacts on them;
- assess the costs and benefits of all the options supported by an acceptable level of evidence, where appropriate through a formal cost-benefit analysis (see Appendix C);
- assess the impacts on business, particularly small business, and quantify the effect of each option on business compliance costs (using a tool such as the Business Cost Calculator) (see Appendix D);
- quantify other significant costs and benefits where appropriate, taking into account the significance of the proposal, its impact on stakeholders;
- if an objective of regulation is to reduce risk, analyse the extent to which each option would reduce the relevant risk, and the costs and benefits involved (see Appendix B);
- recognise the effect of the options on individuals and the cumulative burden on business;
- document any relevant international standards, and if the proposed regulation differs from them, identify the implications and justify the variations;
- if the proposed regulation would maintain or establish restrictions on competition, demonstrate that government objectives can be achieved only by restricting competition (see Appendix E); and
- provide evidence in support of key assumptions and clearly identify any gaps in data.

Where a proposed regulation would maintain or establish restrictions on competition, an assessment against the Competition Principles Agreement guiding principle should be undertaken (see Appendix E). The extent of this assessment should be commensurate with an initial assessment of the extent of the anti-competitive impact. It should involve the evaluation of the impact (for primary and relevant related markets) of the regulatory proposal on the following:

- incumbent businesses;
- entry of new businesses;
- prices and production;
- quality and variety of goods and services;
- innovation;
- market growth; and
- related markets.

The results of this assessment should be compared with assessments of feasible alternative policy options that would equally achieve the policy goal but be less anti-competitive. If there are no available alternatives, the proposal should be assessed from the perspective of economic well being or net benefit to the community.

Regulation impact analysis of the feasible policy options, should also include an assessment of whether a regulatory model is already in place in a participating jurisdiction that would efficiently address the issue in question and whether a uniform, harmonised or jurisdiction-specific model would achieve the least burdensome outcome (or generate the greatest net benefit for the community). A regulation impact assessment should also have regard to whether the issue is state-specific or national, and whether there are substantial differences that may require jurisdiction-specific responses.

The impact analysis in a RIS should include an assessment of Principle 3, that is, adopting the option that generates the greatest net benefit to the community.

There are a number of different approaches to quantitative analysis to help establish the most efficient form that any regulation might take. The techniques set out below are to be employed to determine the option with the greatest net benefit for the community (a particular technique may be omitted if circumstances render it irrelevant).

Risk analysis

This methodology is of use in addressing the threshold issue of whether or not to regulate. Risk analysis should be used in conjunction with other quantitative assessment techniques. Detailed guidance for Ministerial Councils on undertaking risk analysis is included at Appendix B.

Cost-benefit analysis

This technique requires that all the major costs and benefits of a proposal be quantified in monetary terms. In this way, the outcomes of a range of options are translated into comparable terms in order to facilitate evaluation and decision-making. Cost-benefit analysis is most effective in instances where there is sound information on which to base the analysis. However, it should also be noted that cost-benefit analysis should involve consideration of the distribution of benefits and costs, as well as taking account of impacts which are unable to be valued quantitatively. Detailed guidance for Ministerial Councils on undertaking cost-benefit analysis is included at Appendix C.

Business compliance costs

Consideration should also be given to the compliance burden imposed on business. These are the additional (incremental) costs incurred by businesses when complying with regulations.

One option for making initial assessments of the likelihood a proposal will involve compliance costs for business is through the use of the Business Cost Calculator's *Quickscan* function. This tool is located on the OBPR website at www.obpr.gov.au/businesscostcalculator/index.html

If this indicates there are compliance costs for business, then the Business Cost Calculator can be used to complete a detailed assessment of these costs.

As part of a regulatory impact assessment, a practical approach for considering the impacts on business compliance costs potentially flowing from regulatory proposals is through a set of threshold questions. A compliance cost checklist is included at Appendix D.

Competition effects

Ministerial Councils will also need to have regard to the competition effects of any policy options. This is discussed in the next section.

Each RIS should outline the results of this analysis and come to a conclusion on which of the options being considered provides the greatest net benefit for the community for the benefit of the ultimate decision making body.

The impact analysis in a RIS should also include an assessment of Principle 4, that legislation should not restrict competition unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs; and that the objectives of the regulation can only be achieved by restricting competition adopting the option that generates the greatest net benefit to the community.

A preliminary analysis of whether a proposal may restrict competition can be conducted by working through the questions in the competition checklist included at Appendix E.

Element 5 Consultation

The final RIS should:

- outline the consultation objective;
- describe how consultation was conducted (including the stages of the policy development process at which consultation was undertaken, the timeframes given, and the methods of consultation);
- articulate the views of those consulted, including substantial disagreements;
- outline how those views were taken into consideration; and
- if full consultation was not undertaken, provide a reasonable explanation.

The consultation statement in a RIS should address Principle 7 by setting out the consultation undertaken with affected key stakeholders.

Consultation should occur as widely as possible but, at the least, should include those most likely to be affected by regulatory action (for example, consumer and business organisations) which might provide valuable feedback on the costs and benefits of regulation and on the impact assessment analysis generally. Consultation will also provide feedback on the level of support for the proposed regulation.

A statement of the consultation undertaken is a key component of the RIS process.

The OBPR has developed seven principles for best practice consultation and these are detailed in Appendix F.

Element 6 Evaluation and Conclusion

The RIS should provide a clear statement as to which is the preferred option and why.

The RIS should demonstrate that:

- the benefits of the proposal to the community outweigh the costs; and
- the preferred option has the greatest net benefit for the community, taking into account all the impacts.

Element 7 Implementation and Review

The RIS should provide information on how the preferred option would be implemented, monitored and reviewed. Interactions between the preferred option and existing regulation of the sector should be clearly identified.

The implementation and review section of a RIS should address Principle 6, ensuring that regulation remains relevant and effective over time. Specified outcomes of standards and regulatory measures should be capable of revision to enable them to be adjusted and updated as circumstances change.

However, it is important to ensure that amendments to regulatory measures and instruments do not result in undue uncertainty in business operations and in so doing, impose excessive costs on that sector.

Strategies for reviewing new regulations should be identified in the RIS when considering the policy option.

Frequently Asked Questions

What if there is not time to prepare a RIS?

A Ministerial Council may decide that a situation requiring a regulatory response is an emergency. In these cases, a RIS need not be prepared before the regulation comes into effect. However, the Chair of the Ministerial Council must write to the Prime Minister before making the regulation:

- seeking agreement to waive the need for a RIS; and
- explaining why the situation was an emergency and why no transitional measures were available.

If the situation was an emergency, the Ministerial Council would be expected to prepare a RIS within 12 months of making the regulation. Alternatively, in emergency cases the briefing material prepared for a Ministerial Council can be provided to the OBPR, which will advise whether the key elements of a RIS are addressed in such material. If so, the OBPR can “post assess” the material as complying with the COAG Guidelines.

At what point is a RIS required?

A final RIS is required at the point a decision is taken. For multi-staged decision-making processes, where a RIS is prepared in accordance with these Guidelines, a RIS will not generally be required for follow-up or subsequent regulation which implements the original decision, unless significant additional regulation is contemplated.

What is the role of the OBPR?

The OBPR does not have any power over decisions made by Ministerial Councils and its role is advisory. COAG has directed the OBPR to provide independent advice on the adequacy of RIS prepared for both public consultation and decision by Ministerial Councils. In fulfilling this role the OBPR does not support any particular regulatory approach or jurisdiction. The OBPR can assist and advise as to whether a RIS is consistent with the principles and Guidelines in this document. However, the attention of COAG can be drawn to any regulatory proposals for which the RIS is seriously inadequate through the Productivity Commission’s annual regulatory report.

REQUESTING A REVIEW OF A REGULATION IMPACT STATEMENT

If, prior to the introduction of a regulation, there is some dissatisfaction with the process or adequacy of the analysis by which conclusions were reached, two or more jurisdictions may request an independent review of the proposed regulation. The Ministerial Council must then defer its consideration of the regulation and commission a review.

The process of independent review would be triggered if two Heads of Government write to the Chair of the Ministerial Council requesting an independent review of the assessment process. Upon completion, the review body will report back to the relevant Ministerial Council.

The Ministerial Council is to nominate an independent body to conduct the review (the review body). This might include a regulatory review body in any jurisdiction, an appropriate specialist body or a consultant. Jurisdictions that request the review will meet the review's cost and agree to make resources available for the conduct of the review if the Ministerial Council decides to use State or Territory government regulatory review units to conduct the review.

The review body's task is to reassess the RIS and report on whether it can be demonstrated that the assessment process has been carried out according with the Guidelines in this document. It is not intended that the independent review should necessarily repeat the quantitative analysis. The review body may also comment on any aspect of the proposed regulation and will have access to public submissions made in the course of the assessment process.

The report of the review body would become a public document and would be considered by the Ministerial Council in its discussion of the adoption of the proposed regulatory measures. Once the report has been considered, the Ministerial Council's consideration of whether or not the regulation should be adopted by member governments can proceed.

The initial regulatory impact assessment and any review of that assessment are designed to provide the best possible information for decision making by the Ministerial Council. The impact assessment will not bind them or the participating governments since most Ministerial Councils are not formally established and do not have formal and binding voting arrangements. Their purpose is to develop a national consensus in relation to the matters which they consider.

If, upon the advice of the review body, a State or Commonwealth regulatory review body, or other advice, the impact assessment is found to have been faulty, the Ministerial Council retains discretion in its use of the impact assessment to inform its decision making.

If a Ministerial Council fails to act on the recommendations of the review, the matter may be further examined by Heads of Government.

APPENDIX A: FEATURES OF GOOD REGULATION

In formulating national standards and regulatory measures according to the above principles and guidelines, Ministerial Councils should also take into account the following practical features of good regulation.

Accountability

As set out in the protocols for the operation of Ministerial Councils, it is the responsibility of Ministers to ensure that they are in a position to represent appropriately their Government at Council meetings. Therefore, to the greatest extent possible, Ministers should obtain full government agreement on matters which may involve regulatory action before they are considered at Ministerial Council level.

Where a Minister is dissatisfied with the outcome of the impact assessment process, the Minister may seek the agreement of his/her Head of Government to request an independent review of the assessment process.

Compliance strategies and enforcement

Regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest cost to all parties. Incentive effects should be made explicit in any regulatory proposals. Measures to encourage compliance may include regulatory clarity, brevity, public education and consultation and the choice of alternative regulatory approaches with compliance in mind.

The special characteristics of process regulation need to be considered. For example, the number of licences, certifications, approvals, authorities et cetera. should be kept to the minimum necessary to achieve the regulatory objectives.

The regulatory burden can be reduced if the public is required to undertake a minimum level of interaction with government to, for example, renew permits/ licences or file information. This can be achieved through measures such as 'one stop shops'; mutual recognition of approval processes within government as well as between governments; better forms and process design.

Having taken these steps to facilitate compliance, regulators also need to consider the feasibility of enforcing regulatory requirements through the detection of non-compliance.

Mandatory regulatory instruments should contain appropriate sanctions to enforce compliance and penalise non-compliance. However, enforcement options should differentiate between the good corporate citizen and the renegade, to ensure that 'last resort' penalties are used most effectively (rarely) but model behaviour is encouraged. Enforcement measures should not have the effect of encouraging otherwise good corporate citizens to subvert compliance measures.

Inclusion of standards in appendices

Standards should be referenced as current editions in appendices to regulatory instruments rather than embodied in such instruments themselves. It may be appropriate in some circumstances for regulations to reference a specific standard (eg AS 1234).

A disadvantage of only referencing the title of a standard (eg AS1234) is that impact assessment is carried out only on the initial instrument and referenced standard. The standard, however, may be subsequently

changed or updated. This may result in significant changes to the costs or benefits of regulation, with no opportunity to review the implications of such a change. This can have the effect of transferring regulatory power from governments to standard setters. To prevent this, it may be appropriate in some circumstances for regulatory instruments to reference a specific version of a standard by referring to its date (for example, AS 1234, 1993). If an amended version of a standard is to be adopted any changes to this standard would then require amendment of the regulatory instrument and hence further impact assessment.

An advantage of only referencing the title is that changes to the standards do not render the regulations null and void.

In determining whether to include a standard, consideration should also be given to the costs of obtaining the standard in order to comply with it.

Performance-based regulations

Regulatory instruments should be performance-based, that is, they should focus on outcomes rather than inputs. 'Deemed to comply' provisions may be used in instances where certainty is needed. In such cases, regulations might reference a standard or a number of standards deemed to comply with the regulation. There should be no restrictions on the use of other standards as long as the objectives of the regulation are met.

Plain language drafting

Where possible, regulatory instruments should be drafted in 'plain language' to improve clarity and simplicity, reduce uncertainty and enable the public to understand better the implications of regulatory measures.

Date of effect

The dates of commencement of proposed standards and regulatory measures should be carefully planned to avoid or mitigate unintended or unnecessary market consequences, such as the necessity to discard non-complying stock and to allow transition to compliance with new regulatory requirements.

Advertising the introduction of standards and regulations

Public consultation usually only involves interested parties. Therefore, once produced, new regulatory measures should be advertised to bring them to the attention of the wider community.

International standards and practices

Wherever possible, regulatory measures or standards should be compatible with relevant international or internationally accepted standards or practices in order to minimise the impediments to trade. Compatibility in this context does not necessarily imply uniformity, however.

National regulations or mandatory standards should be consistent with Australia's international obligations. Australia has obligations under the GATT Technical Barriers to Trade Agreement (Standards Code) and the World Trade Organisation's Sanitary and Phytosanitary Measures (SPS) Code. Regulators may refer to the Standards Code relating to the International Standards Organisation's Code of Good Practice for the Preparation, Adoption and Application of Standards.

APPENDIX B: RISK ANALYSIS

What is risk?

Risk is the probability of an undesirable event occurring. Much regulatory activity, for example in the areas of health and safety, is concerned with the risk of persons being harmed by engaging in a particular activity (for example, by consuming a product or by working in a factory). The notion of harm encompasses fatality, injury or illness.

Risks can be viewed in several ways. It is possible to look at societal risk or individual risk. The former averages out individual risk and measures the risk to society as a whole or to a large group of people. Individual risk, on the other hand, varies from person to person. In addition, voluntary risk can be distinguished from involuntary risk. Voluntary risk occurs where an individual can choose to undertake or avoid the risk-causing activity and is fully aware of the consequences.

Conversely, involuntary risk occurs where there is no choice or inadequate information about the consequences. Incomplete information is one of the main forms of market failure. An analysis should also make a distinction between perceived risks and actual risks. Perceived risks occur where individuals overstate the importance of relatively improbable events or discount the importance of highly probable events.

An important distinction to make when conducting risk analysis is that between risk and uncertainty. Risk involves a situation where the probabilities of the various outcomes are reasonably well known. In statistical terms, a probability distribution can be attached to the cost or benefit in question. Uncertainty involves a situation where, while the values the costs or benefits may take may be known, the probabilities of the outcomes are not known.

What is risk analysis?

Risk assessment is a means of analysing the risk of an undesirable event occurring and the consequences that are liable to arise if it does occur. An integral part of the assessment process, following on from these first two steps, is determining what action may be necessary to reduce or eliminate the risk and/or its consequences.

Risk analysis is commonly used by policy analysts as a means of assessing individual and societal risks and proposing possible regulatory and non-regulatory solutions to an identified problem. It is most commonly used to analyse regulatory interventions in the health and safety field. However it can also be applied in other public policy fields.

Risk analysis

Risk analysis can serve a number of functions. By comparing the risk associated with the status quo with that after government intervention, it can be used to determine more accurately whether intervention is appropriate and/or worthwhile. Risk analysis can also be used as an input into other assessment techniques like cost-benefit analysis.

Risk analysis, in its most basic form, involves quantitative assessment of the magnitudes of the risk affected by the proposal. The contents of a risk analysis can easily be extended by the assessment of additional information, such as benefits or associated risks.

Risk analysis is a valuable tool in further addressing the threshold issue of whether or not to regulate. Furthermore, risk analysis is of use in answering two important questions. First, whether the risks that regulation is intended to address are of significant magnitude compared with other risks. Second, the extent to which regulation reduces the initial risk problem.

Content of a risk analysis

The following issues can be addressed in the risk assessment of regulation:

- an appraisal of the current level of risk to the exposed population from an identifiable source;
- the reduction in risk which will result from the introduction of the proposed measures;
- consideration of whether the proposed measures are the most effective available to deal with the risk; and
- whether there is an alternative use of available resources which will result in greater overall benefit to the community.

Limitations of risk analysis

There are a number of ways of assessing risk and the impact it is liable to have. They tend to be relatively arbitrary and non-empirical, so that a set of results can be easily interpreted by different persons in different ways. Risk assessment does not normally involve an assessment of the costs likely to be incurred by the affected parties if the undesirable event does happen. Nor does it take into account the costs and benefits associated with the measures proposed to reduce or eliminate the risk and/or its consequences. Risk analysis should therefore not be used as the sole basis for deciding whether to take action to correct an undesirable situation or for determining the type of action to be taken.

The risk analysis process

Risk analysis involves three distinct but inter-linked steps:

- defining the risk;
- selecting the appropriate response; and
- monitoring the situation and reviewing the effectiveness of the response that was selected and implemented.

Defining the risk

The following questions should be answered to ensure that the risk is defined as accurately as possible:

1. What is the hazard? It is necessary to define exactly what the hazard is;
2. What is the risk? It is important to distinguish between commercial risks and physical risks. Commercial risks can, and probably should, be borne by the company or industry involved and resolved at that level. On the other hand, a physical risk (and this ranges from a direct personal threat to life to environmental pollution) is a problem that is likely to affect individuals and society as a whole and therefore is best addressed at the appropriate government level;
3. How widespread is the risk? Is the risk local only, is it state-wide, national or international? Obviously, the extent of measures to be considered to combat the risk will depend on this assessment, and may include the need for international co-operation;

4. Is the risk transmittable? In the case of medical risks, for example (such as a contagious disease), the transmissibility of the risk is crucial to this assessment, as is the means of transmission and its avoidability. This will also involve identification of the source of the risk and whether transmission occurs across boundaries, for example, from plants to insects to animals to humans, or between different geographical locations;
5. In what circumstances will the risk arise? Is the risk continuous, or will it arise only in particular circumstances (for example, if a product is used only in a specific way; or only if a particular chemical is used);
6. Who or what is most at risk? Identification of the at-risk groups is crucial. It is necessary to determine for instance whether children of certain ages are most at risk, whether it is the population as a whole, whether the risk is confined to a particular group (for example, only plants, or male children below the age of 10, or women over 45); and
7. Is harm or injury liable to occur? Having gone through the above steps, it is important to determine whether any actual harm (for example, to the environment) or injury is liable to occur. This necessarily involves assessing not only the immediate effects but also the longer term effects. If no actual harm or injury is liable to occur, then any question of intervention probably becomes almost superfluous.

Selecting the response

This step is dependent on the accuracy and completeness of having defined the hazard. The first question to be asked is whether there is any realistic, viable action that the government can take to correct or ameliorate the situation. If the answer is no, or if the costs of any action are likely to outweigh the benefits, then serious consideration should be given to not taking any action at all. An explanation must be given as to what actions were considered, why they are impractical and the consequence (if any) of no action being taken.

Monitor the situation and review the effectiveness of the response

Whether the selected response is no action, introduction of a tax or subsidy, or a voluntary code of practice or a mandatory regulation, it is essential that both the situation and the effectiveness of the response be closely monitored. Monitoring will determine whether:

- the risk was under- or over-estimated and the response is adequate in the circumstances;
- the risk has changed and the response no longer applies to new circumstances; and
- those at which the action was directed are responding.

The monitoring and assessment process requires determination of:

- whether the risk has been eliminated. In which case, can the response be removed altogether or should it be retained in place to prevent a recurrence of the risk?
- whether the risk has been reduced but not eliminated. It may be unrealistic to expect complete elimination of the risk to occur. In that case, what level of reduction in the risk leaves a situation which, while not necessarily ideal, is acceptable? and
- how much longer the response should be left in place. If any reduction in the level of risk is not sufficient to justify considering the situation to be acceptable, how much longer should the response stay in place to reach an acceptable level of reduction?

APPENDIX C: COST-BENEFIT ANALYSIS

What is cost-benefit analysis; and how and where can it be used?

Cost-benefit analysis (CBA) is an analytical tool that can be used to measure the economic and social impact of government action by reference to the 'net social benefits' that action might produce. As such, it can be a valuable aid to decision making. Its power as an analytical tool rests in two main features:

- costs and benefits are each as far as possible and appropriate expressed in money terms and hence are directly comparable with one another; and
- costs and benefits are valued in terms of the economy and society as a whole, so the perspective is 'global'. This contrasts with, for example, a financial evaluation, which is conducted from the vantage point of an individual, a firm, an organisation or group.

Cost-benefit analysis can be employed to decide:

- whether a regulatory proposal should be undertaken;
- if an existing regulation should be maintained; or
- between alternative regulatory proposals (usually aimed at similar objectives).

Decisions about the overall effectiveness of regulatory action should not be made on the basis only of its effect on particular groups in society. Public policy makers are expected to make judgments based on what is best for the community as a whole. By measuring 'social', as opposed to only private, market-based costs and benefits, CBA is a valuable tool when developing good policy responses to economic and social problems. When undertaking CBA as part of the evaluation of the regulatory action being considered, TTMRA Principles should be adequately considered.

The term 'net social benefits' refers to the difference between social benefits and social costs. According to the cost-benefit rule, government action is only justified where, subject to budget constraints, there are positive net social benefits expected to be gained from intervention, such as imposing regulations on the community. Benefits and costs are 'social' rather than private or individual, in the sense that they are measured irrespective of the people to whom they accrue and are not confined to formal market transactions. If there are non-market implications from regulatory activities or market prices are distorted, CBA proceeds as if the correct market prices existed. These are referred to as shadow prices.

Inevitably, some costs and benefits resist the assignment of dollar values. Known as 'intangibles', these are separately presented to decision-makers for assessment in conjunction with those that can be quantified.

A major advantage of CBA is that costs and benefits occurring at different points in time can be explicitly compared. The 'factoring down' of benefits and costs that will occur in the future into present values is known as 'discounting'. Since a dollar in the future is usually worth less than a dollar today, future costs and benefits need to be discounted to their equivalent 'present value'. Conversely, in a retrospective analysis, past costs and benefits are compounded forward to their present value.

Under the net present value rule, a regulatory activity should only be undertaken if its net present value (that is, benefits minus costs) is positive. Accordingly, CBA is a valuable tool for decision makers when assessing the issue of whether a particular proposal is appropriate. If comparing a number of options, the alternative with the highest positive net present value would be preferred.

CBA can provide guidance on the implications of regulatory activity, where there are grounds for mistrusting the signals provided by market prices or where no markets exist. CBA is also helpful where regulations impose 'spillover' costs or benefits on third parties. Often these do not receive due recognition because no formal market transactions take place. Through the use of shadow prices, values can be placed on non-market 'spillover' effects (for example, pollution, safety) and compared with market transactions.

Examples where the signals that market prices normally provide are either absent or fail to reflect the true costs of regulatory action arise when valuing:

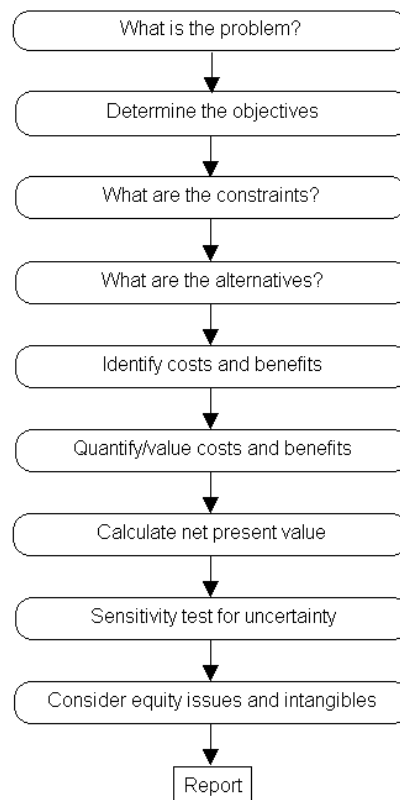
- intermediate goods - such as savings in travel time resulting from transport regulations;
- 'externalities' - or unmarketed positive or negative spillover effects such as arise from pollution, vaccination programs or banning a dangerous product;
- goods affected by taxes and subsidies; and
- labour in the presence of unemployment.

The main practical constraint to using CBA is the feasibility and appropriateness of assigning money values to the costs and benefits generated by government action. In circumstances where these constraints are overwhelming, cost-effectiveness analysis is frequently a viable alternative approach.

The key steps in the CBA process

There is a logical sequence of steps to take when undertaking a cost-benefit analysis prior to deciding on a standard or regulation. A diagram of the steps outlined below is shown in Figure 1.

Figure 1: Key steps in the cost-benefit process



1. *What is the problem?*

The first step entails an investigation and assessment of the problem, its context and its background. A proposal to intervene with regulation or standard will be based on an assessment that the status quo is undesirable. That assessment needs to be described to define the problem. This is an opportunity to place the proposal for intervention in its broader context, before narrowing the focus to its specific details.

2. *What are the objectives?*

This step includes a definition of the objectives to be achieved and who the intended beneficiaries are.

3. *What are the constraints?*

Public policy makers face various constraints on government action. Examples of such constraints are:

- financial - for example, budgetary limitations and price ceilings;
- distributional - for example, a perverse distribution of benefits among individuals or groups (for example, from the less well off to the wealthy);
- managerial - for example, limits on the staff;
- environmental - for example, compliance with environmental protection requirements; and
- policy - for example, is the proposal consistent with broad government policy?

Before options are identified for further consideration, any practical constraints on the feasibility of such alternative options should be examined and documented in the RIS. In some cases the nature and extent of these constraints may be unclear or difficult to measure. In which case, any uncertainties and risks should also be acknowledged and documented in the RIS.

When analysing all alternatives consideration should be given to the principles contained in the Competition Principles Agreement of 11 April 1995, in particular clause 1 (3), which includes reference to consideration of the environmental, social and economic aspects.

4. *What are the alternatives?*

While each alternative to the proposal for intervention that is identified will require a considerable amount of subsequent analysis if it is to be fully incorporated into a CBA, the number of alternatives generated should be sufficient to provide the decision-makers with real scope for exercising choice. To facilitate this, alternatives should be clearly distinguished.

Furthermore, a 'do nothing' alternative should always be identified, implicitly if not explicitly. This will be the base case against which alternatives can be compared. Then costs and benefits would be incremental to what would have happened in the absence of regulatory action.

5. *What are the benefits?*

A list of the benefits that are expected to flow from the proposals should be drawn up. To identify benefits (and costs), a clear account of the chain of causation from the proposal is needed. This should be available from the policy analysis undertaken in formulating the proposal. The list of benefits might include such items as:

- an increase in the value of economic output as a result of a particular action;
- avoided costs - costs which would have been incurred in the 'do nothing' situation;

- productivity savings – that is, producing more with less; and
- health, environmental and other social benefits, which are often not marketed or are characterised by prices which reflect less than the full value of the benefits.

6. *What are the costs?*

Similarly, for each alternative a list of costs should be drawn up. Examples of costs are:

- increases in expenditure by governments to establish and/or maintain regulation and enforcement regimes;
- increased costs on business and the broader community from higher input costs and regulatory compliance costs. A RIS should provide quantitative data on regulatory compliance costs, including information about the number and type of businesses or individuals affected, and the likely financial (and other) impacts on those affected. Compliance costs can include additional paper burden costs, additional staffing, licence fees or charges, external advice, transport and/or restrictions on competition. RIS should also give full consideration to ways of minimising such costs. Where quantitative data about such costs are unavailable, a qualitative assessment should be provided;
- increased costs on consumers from higher prices for goods and services; and
- externalities or spillover effects on other parties, both positive and negative. For example, environmental costs such as air, water and noise pollution.

Particular attention should be given to the likely impacts on small business, especially where regulatory compliance costs could have a disproportionate impact on small business.

7. *How can costs and benefits be quantified?*

Cost-benefit analysis compares costs and benefits using a common measure, usually dollars. Therefore, dollar values must be assigned to as many of the costs and benefits as possible. Market prices, where they exist, provide a great deal of information concerning the magnitude of costs and benefits. However, actual prices sometimes have to be adjusted to convert private costs and benefits into social ones, that is, costs and benefits which reflect gains and losses to the economy as a whole, rather than to individuals or groups.

8. *How should net present value be assessed?*

The values assigned to costs and benefits should be based on an explicit assumption about price inflation; normally, costs and benefits will be valued in real terms with the base being that of the current year. Total costs in each year of the project's life are subtracted from total benefits in that year to yield net benefits in each year. Annual net benefits are then discounted back to today's dollars. The stream of discounted net benefits is then summed to yield the net present value.

Subject to a consideration of budget constraints, intangibles and distributional issues, a CBA will support a proposal if the net present value is equal to or greater than zero. Similarly, if there are a number of ways of achieving the desired outcome, a CBA will support the alternative with the highest net present value, where that is equal to or greater than zero.

9. How should uncertainty be dealt with?

The values included in a CBA are the 'most likely' or 'best' estimates. Sensitivity analysis is a simple procedure for providing the decision-maker with information about the impact of estimation errors on the viability of the proposal. The first step in a sensitivity analysis is to substitute the most pessimistic estimates for each variable simultaneously, and see how much the net present value is affected. If the result is still greater or equal to zero, then we are able to say that even under worst case assumptions, the CBA supports the proposal.

The second step is to try to assess how risky the proposal is, that is, which variables significantly affect the net present value and which do not. This can be established by varying each variable one at a time, holding all other variables unchanged.

10. How should the report be structured?

The final step in the cost-benefit process is the writing-up of the analysis, which includes the recommendation to the decision-maker. The report should include:

- a summary of the results of the analysis;
- an introduction describing the considerations which led to the decision to undertake a CBA;
- a statement of the 'problem' the proposal is designed to redress;
- the objectives of the regulatory proposal;
- a description of the alternatives considered;
- the constraints considered in conducting the analysis and the alternatives selected;
- the time profiles of costs, benefits and net benefits, together with information on the sensitivity of those profiles to alternative assumptions;
- information on intangible costs and benefits;
- a list of assumptions made in performing the analysis, and information on how benefits and costs were estimated;
- a description of distributional effects;
- a conclusion discussing the results of the analysis; and
- an outline of an evaluation mechanism.

To what level or depth should the analysis be conducted?

The steps outlined are recommended for every CBA. However, obtaining and analysing information also incurs costs. Hence, there are important choices to make regarding the level or depth to which the analysis is conducted. The more significant a proposal and the greater the likely economic and social implications, the more expenditure on a CBA can be justified. The viability of smaller proposals can be threatened by investing too much in analysis. This possibility should set obvious limits on the level and depth of the analysis required.

The likely benefits of obtaining and analysing additional information should always exceed the costs of so doing. Better information often reduces the uncertainty surrounding estimates, however, if a proposal is already known to be clearly viable or unviable, the pay-off from obtaining extra information may be negligible. Detail and complexity are not the same as rigour - which is ultimately more important. An elaborate and detailed analysis of a problem that has been wrongly conceptualised may well be worthless.

But a 'back of the envelope' analysis of a problem that has been thought through correctly will, at the very least, be a helpful first step.

Letting decision-makers decide

Distributional implications can be obscured by the aggregating character of the cost-benefit process. Analyses should include all the information available to ensure that decision-makers are aware both of the identity of the groups likely to gain and to lose as a result of government action, and of the nature and size of the gains and losses. This information should be carefully presented, most usefully in the form of a distributional incidence chart or matrix.

Distributional judgements are properly made at the political level. In the interests of avoiding subjective bias, analysts should, by and large, refrain from attaching distributional weights to cost and benefit streams. Exceptions might be where there are unambiguous government policy objectives to assist specific groups in the community, and where the justification for special assistance to these groups relative to other groups is clearly established. However, for reasons of transparency, decision-makers and the public should be made fully aware of the costs of government action aimed at benefiting particular individuals or groups in the community.

APPENDIX D: BUSINESS COMPLIANCE COSTS

Consideration should be given to the compliance burden imposed on business. These are the additional (incremental) costs incurred by businesses when complying with the regulations.

One option for making initial assessments of the likelihood a proposal will involve compliance costs for business is through the use of the Business Cost Calculator's *Quickscan* function. This tool is located on the OBPR website at www.obpr.gov.au/businesscostcalculator/index.html

As part of a regulatory impact assessment, a practical approach for considering the impacts on business compliance costs potentially flowing from regulatory proposals is through consideration of the set of threshold questions in the checklist below.

Business Compliance Cost Checklist

As part of a regulatory impact assessment, a practical approach for considering the impacts on business compliance costs potentially flowing from regulatory proposals is through a set of threshold questions (a compliance cost checklist).

Would the regulatory proposal involve one of the following compliance tasks?

Notification

Will businesses incur costs when they are required to report certain events?

- For example, businesses may be required to notify a public authority before they are permitted to sell food.

Education

Will costs be incurred by business in keeping abreast of regulatory requirements?

- For example, businesses may be required to obtain the details of new legislation and communicate the new requirements to staff.

Permission

Are costs incurred in seeking permission to conduct an activity?

- For example, businesses may be required to conduct a police check before legally being able to employ staff.

Purchase cost

Are businesses required to purchase materials or equipment?

- For example, businesses may be required to have a fire extinguisher on site.

Record keeping

Are businesses required to keep records up-to-date?

- For example, businesses may be required to keep records of accidents that occur at the workplace.

Business Compliance Cost Checklist

Enforcement

Will businesses incur costs when cooperating with audits or inspections?

- For example, businesses may have to bear the costs of supervising government inspectors on site during checks of compliance with non-smoking laws.

Publication and documentation

Will businesses incur costs when producing documents for third parties?

- For example, businesses may be required to display warning signs around dangerous equipment or to display a sign at the entrance to home-based business premises.

Procedural

Will businesses incur costs that are of a non-administrative nature?

- For example, businesses may be required to conduct a fire safety drill several times a year.

Other

Are there any other business compliance costs associated with the regulatory proposal?

APPENDIX E: COMPETITION EFFECTS

When considering regulatory options Ministerial Councils will need to consider what the impact is of the proposed regulatory measure on competition, including the introduction of new processes and techniques.

A preliminary analysis of where a proposal may restrict competition can be conducted by working through the questions in the competition checklist below. Where this preliminary analysis indicates there will be an impact on competition, then a competition assessment should be undertaken as part of the RIS.

Competition Assessment Checklist

As part of a regulatory impact assessment, a practical approach for considering the impacts on business and individuals and on competition potentially flowing from regulatory proposals is through a set of threshold questions (a competition checklist) followed by, where appropriate, a competition assessment.

The competition assessment checklist is made up of the following threshold questions. (Some examples are provided.)

Would the regulatory proposal affect the number and range of suppliers?

- Grant exclusive rights for a supplier to provide a good or service?
- Establish a licence, permit or authorisation process as a requirement of operation?
- Affect the ability of some types of firms to participate in public procurement?
- Significantly alter costs of entry or exit to a supplier?
- Create a geographic barrier to the ability of businesses to supply goods or services, invest capital or supply labour?

Would the regulatory proposal change the ability of suppliers to compete?

- Control or substantially influence the price at which a good or service is sold?
- Alter the ability of suppliers to advertise or market their products?
- Set standards for product/service quality that are significantly different from current practice?
- Significantly alter costs of some suppliers relative to others?

Would the regulatory proposal alter suppliers' incentives to compete vigorously?

- Create a self-regulatory or co-regulatory regime?
- Impact on the mobility of customers between suppliers?
- Require/encourage the publishing of information on company outputs/price, sales/cost?
- Exempt an activity from general competition law?

If the answer to any of these questions is 'yes', then further analysis may be required and you should contact the OBPR. (There may be other impacts on business and individuals which are not covered in the checklist. In such cases you should consult with the OBPR.)

APPENDIX F: CONSULTATION GUIDELINES

Consistent with the principle for good regulatory process that effective consultation with affected key stakeholders should occur at all stages of the regulatory cycle, In February 2006, COAG committed to improving mechanisms for consultation with business and supporting appropriate consultation with all relevant stakeholders.

Consultation ensures that both the regulator and the regulated have a good understanding of the problem, alternative options to address it, possible administrative and compliance mechanisms and associated benefits, costs and risks.

Lack of consultation can lead to regulation that is inappropriate to the circumstances, costly to comply with and poorly adhered to.

Seven principles for best practice consultation are outlined below:

Continuity — Consultation should be a continuous process that starts early in the policy development process.

Targeting — Consultation should be widely based to ensure it captures the diversity of stakeholders affected by the proposed changes. This includes Commonwealth, State, Territory and local governments, as appropriate.

Appropriate timeliness — Consultation should start when policy objectives and options are being identified. Throughout the consultation process stakeholders should be given sufficient time to provide considered responses.

Accessibility — Stakeholder groups should be informed of proposed consultation, and be provided with information about proposals, via a range of means appropriate to those groups.

Transparency — Ministerial Councils need to explain clearly the objectives of the consultation process, the regulation policy framework within which consultations will take place and provide feedback on how they have taken consultation responses into consideration.

Consistency and flexibility — Consistent consultation procedures can make it easier for stakeholders to participate. However, this must be balanced with the need for consultation arrangements to be designed to suit the circumstances of the particular proposal under consideration.

Evaluation and review — Policy agencies should evaluate consultation processes and continue to examine ways of making them more effective.

Various consultation mechanisms can be used that are consistent with these principles such as annual regulatory plans, business consultation portals and the use of policy 'green papers' and exposure drafts for matters of major significance.

These consultation Guidelines are to be applied to all major initiatives and cover all aspects of developing regulation: from the policy proposals/'ideas' stage through to post-implementation reviews. The nature and extent of consultation should be commensurate with the potential magnitude of the problem and impact of proposed regulatory and non-regulatory solutions.